

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2784 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PATEL GAGAJIBHAI RANCHHODBHAI

Versus

COLLECTOR, (TO BE SERVED ON M/S.PATEL ADVOCATES)

Appearance:

MR AKSHAY H MEHTA for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/08/1999

ORAL JUDGEMENT

1. Heard the learned counsel for the petitioner, perused the special civil application and the affidavit in reply of the respondent No.1. It is to be mentioned here that the petitioner has not filed any rejoinder to the affidavit in reply.

2. The petitioner is praying for direction to the respondent No.1 to effect the partition as per the well

recognised principles of partition. Next prayer has been made for restraining the respondent No.1 from implementing the partition effected by him as per the report at Ex.191, annexure 'A'. Further prayer has been made for grant of interim relief. This petition has been admitted on 20th September, 1982 and was ordered to be heard with Special civil Application No.2783/82. On being asked by the Court, learned counsel for the petitioner has not given out what ultimately happened in the special civil application No.2783/82.

3. The facts of the case, in brief, are that the respondents No.2 and 3 filed a special civil suit No.4/75 in the Court of Civil Judge, (S.D.), Surendranagar against the respondents No. 4 to 7 and the petitioner for partition of the properties described in Schedules A,B and C belonging to Joint Hindu Family and for declaring 1/3 share therein of deceased Manubhai Govabhai, the husband of respondent No.5 and father of respondent No.7 and for separate possession of their share in the said properties. The petitioner, as per his case, is purchaser of undivided share in Survey No.102, 332, 266 vide sale deed dated 1-4-1972. The petitioner has purchased this land from respondent No.4. It is the defence of the petitioner that he is a bonafide purchaser with due consideration. The civil court decreed the suit and the respondent No.1 has effected the partition on 8-3-1982. It is the grievance of the petitioner that the partition has not been properly effected. The share which should have been given to the respondent No.4 has been given to the other respondents and it resulted in loss to the petitioner of his valuable land.

4. Learned counsel for the petitioner has failed to satisfy how the order of the respondent No.1 effecting the partition in pursuance of the decree of the civil court is illegal and arbitrary. Learned counsel for the petitioner do not dispute that the decree passed by the civil court has attained the finality. When it has attained the finality and the petitioner is not challenging the same, I fail to see how he could have his objection in the actual division of the land. The report which has been submitted for the actual partition of the land was accepted by the Civil Judge and rightly against that order the appeal was not maintainable.

5. Otherwise also, I fail to see how this petition is maintainable before this court. The report of the respondent No.1 is not any order but it is only a report which has been accepted by the civil court and that order could have been challenged but curiously enough that

order of the civil court has not been challenged in this special civil application. Challenge has been made only to the report of the respondent No.1, annexure 'A' and only on this ground this petition otherwise deserves to be dismissed. The order which could have been really a impugned order has not been challenged. The report of the respondent No.1 is merged in the order of the civil court and this report cannot be challenged without challenging that order.

6. Taking into consideration the totality of the facts of this case, I do not find any substance in this special civil application.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief if any, granted by this Court stands vacated. No order as to costs.

zgs/-